Supreme Court, U.S.
FILED

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No.

IN THE
Supreme Court of the United States

OCTOBER TERM ,1995

JOSEPH M. FLATLEY,
Petitioner,

v.

CHRISTINE TODD WHITMAN, Governor of the State of New Jersey; MURRY D. BROCHIN; ROBERT E.HAMER; EDWIN H. STERN, Judges of the Superior Court of New Jersey, officially and personally; ROBERT L. CLIFFORD; ALAN B. HANDLER; DANIEL J. O'HERN; STEWART G. POLLACK; MARIE L. GARIBALDI ; GARY S.STEIN; ROBERT N. WILENTZ, Justices of the Supreme Court of New Jersey, officially and personally; STERN & NACKSON, P.C. a New JERSEY Professional Corporation; GARY E. STERN; JOSEPH LEWIS NACKSON; JOAN FLATLEY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

JOSEPH M. FLATLEY
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57 pp

QUESTIONS PRESENTED

I. Did the Court of Appeals for the Third Circuit err by deciding an important question of federal law in a way that conflicts with relavent decisions of this Court?

II. Did the Court of Appeals err by affirming and thus sanctioning the decision of a lower court that clearly and totally departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The parties are as captioned. There are no parent or subsidiary companies to be listed pursuant to Rule 29.6 of the Rules of the United States Supreme Court.

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TABLE OF CASES

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Burnham v. Superior Court of California,
110 S. Ct. 2105 (1990) 5

Joseph M.Flatley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The November 1, 1995 opinion of the Court of Appeals is reported at 1995 U.S.App.LEXIS 35887 and is reprinted in the Petitioner's Appendix at A.

The prior opinions of the United States District Court for New Jersey are unpublished(D.C.No. 94-cv-04914). These opinions are reprinted in the Appendix as follows :

TYPE	DATE	APPENDIX
Order	March 22, 1995	B
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STATEMENT of JURISDICTION

The judgment of the Court of Appeals was entered on November 1, 1995. A petition for rehearing was denied on November 28, 1995.The denial is reprinted in the Appendix at F. On the Clerk's own motion the petitioner was granted until April 26, 1996 to file this petition. The petition is timely.

The jurisdiction of this Court is invoked pursuant to 28 USC §1254(1). The jurisdiction of the District Court was invoked pursuant to 28 USC §1343.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves a threshold question of deprivation of rights pursuant to 42 USC§ 1983, which provides as follows: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects , or causes to be subjected, any citizen of the United States or anyother person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act ofCongress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF CASE

This is a civil rights action pursuant to 42 USC §§§ 1983, 1985, and 1986. Additional relief is requested pursuant to 18 USC §241. The State of New Jersey through its judicial officers has allowed respondent Flatley, who is admittedly a New York citizen, to obtain a discovery order, reprinted as appendix G and a warrant of commitment reprinted as appendix H against the petitioner who is also a New York citizen, without the commencement of a civil action in either New York or New Jersey.

The orders are under color of law and deprieve the petitioner of privileges and immunities guaranteed by the Fourteenth Amendment, specifically the right to due process and the right to travel into and out of and conduct commerce or social intercourse in any State of the Union without the intimidating fear of incarceration.

Petitioner and respondent Flatley at all times relavent have been citizens of the State of New YORK. They were married in New York in 1964. The marriage terminated in a New York divorce in 1981. Due to a material change in the petitioner's financial circumstances, arrears accrued in temporary maintenance and child support. Respondent Flatley sought and obtained New York judgments for arrears.

In 1990, respondent Flatley commenced a civil action in New Jersey by filing a Complaint seeking full faith and credit for her New York judgments based on petitioner's inherited interest in New Jersey real property. The Complaint was disposed of by the entry of the Final Judgment which is reprinted as appendix I.

In 1991, repondent Flatley executed against and acquired title to the New Jersey real property. The Sheriff's deed conveying dated June 14, 1991 is recorded in the Bergen County (N.J.) County Clerk's Office at DEEDS; Book 7464,Pages 217-221.

At a hearing confirming the conveyance on July 12, 1991 Judge Robert Follender ruled from the bench that since respondent Flatley had executed against and had acquired the real property she must satisfy her judgment against the real property. The relavent part of the transcript of that hearing is reprinted in the appendix at K.

At this stage of the proceedings, respondent Flatley's Complaint and Judgment were disposed of by the acts of the Courts of the State of New Jersey. Nothing lied against the petitioner and he left

the Bergen County (N.J.) Courthouse on July 12, 1991 with clean hands.

Some four months later, respondent Hamer , who was not involved in any of the earlier proceedings, issued an ex-parte discovery order.The text of this order is reprinted in appendix G.

On May 13, 1992 in another ex-parte proceeding respondent Hamer issued a warrant of commitment. The text of this warrant is reprinted in the appendix at H.

Both orders were affirmed and an appeal as a matter of right was denied by the New Jersey Supreme Court.

Petitioner sought Federal relief. The text of his Complaint is reprinted as Appendix K.

On the motion of the State defendants the Complaint was dismissed for failure to state a cause of action pursuant to F.R. Civ.P 12(b) 6. In its opinion the District Court stated that since the state defendants were acting upon Complaints filed before their respective courts they were absolutely immune from the petitioner's claim for damages. The opinion is reprinted as Appendix C.

On reargument when a Complaint was not or could not be produced , the District Court ruled that since respondent Hamer recited in the discovery order that he had read a verified petition the matter was properly before him.Please see appendix D.

The United States Court of Appeals affirmed without opinion. Please see appendix A.

REASONS FOR GRANTING WRIT

PRIOR DECISIONS OF THIS COURT

Pennoyer v. Neff, 95 U.S. 714,732, 24 L.Ed. 565(1878) stands for the proposition that a judgment entered by a court lacking jurisdiction is void, is entered coram non judice and violates the Due Process Clause of the Fourteenth Amendment. Please see Burnham v. Superior Court of California, 110 S.Ct. 2105 (1990) at 2109,2110.

In the case at bar there is no evidence in the record that respondent Flatley had a claim against petitioner on November 14 , 1991 or May 13, 1992 , the dates that the exparte orders were entered or at anytime thereafter to the present.

There is also no evidence in the record that respondent Flatley or her attorneys Stern& Nackson filed a Complaint against the petitioner after the discharge of the judgment on July 12, 1991 to the present.

Further there is no evidence in the record that respondent Flatley or her attorneys or any other attorney or process server attempted to notify the petitioner, either formally or informally of proceedings against him; other than to mail the exparte orders after they were granted.

There is also no evidence in the record that the alleged verified petition that respondent Hamer acted upon was ever served or sent to the petitioner either pre or post judgment. Such condition exist to the present.

The conclusion is simple. Respondent Hamer never had personal jurisdiction over the petitioner.Therefore his orders are void , coram non judice and violated the petitioner's rights to due process. Since the arrest warrant provides for the petitioner's incarceration it is also abusive of petitioner's right to travel

throughout the fifty states.

As and to the clear language and meaning of 42 USC § 1983:

1. Governor Whitman is the nominal respondent for the State of New Jersey. Respondent Whitman has decided to defend the State acts and the judicial defendants. By defending the respondent causes the petitioner to be subjected to the continued deprivation of rights secured by the Constitution.

2. Respondent Hamer by acting without personal jurisdiction and ordering the arrest of the petitioner clearly subjected the petitioner to the deprivation of rights secured by the Constitution.

3. The other judicial defendants by either affirming respondent Hamer, directly or indirectly, either subjected the petitioner or caused the petitioner to be subjected to a deprivation of rights secured by the Constitution.

4. Respondents Gary Stern, Nackson and Stern & Nackson caused by appearing in Court , the petitioner to be subjected to the deprivation of rights secured by the Constitution.

5. Respondent Flatley through her agents caused the petitioner to be subjected to the deprivation of rights secured by the Constitution.

Petitioner has established a prime facie case. The case should be returned to the District Court forthwith. It is anticipated that the 18 USC § 241 violations, alleged in the Complaint, will be turned over to a contiguous United States Attorney.

ACCEPTED AND USUAL COURSE OF
JUDICIAL PROCEEDINGS

In New York, New Jersey and the Federal system the usual course of judicial proceedings is as follows:

1. A plaintiff must have a claim against a defendant. There is no evidence that respondent Flatley has or had a claim at any time relavent.

2. The claim must be reduced to a Complaint and filed with the Court. There is no evidence in the record that respondent Flatley has a claim or reduced it to a complaint or filed it with a court anywhere.

3. The Complaint must be served on the defendant.There is no evidence in the record that respondent Flatley or her agents served or attempted to serve the Complaint or any document in lieu thereof on the respondent

4. The court must acquire personal jurisdiction over the defendant. As stated earlier personal jurisdiction was lacking.

On all four precepts, the proceedings in the Hamer court fail the accepted and usual course of judicial proceedings test.

The Court's supervisory power should be exercised because the affirmance is a giant leap backwards.Petitioner is not an attorney but has read enough of the early cases to know that ancient common law practice allowed all sorts of documents and representations ,etc to commence a civil action.By the 1950's most states including New Jersey had adapted Federal Rules of Civil Procedure 2 and 3.to wit , in the case of New Jersey N.J.R. 4:1 and 4:2. "There shall be one form of action in civil practice to be known as a civil action. A civil action is commenced by filing a complaint with the Court.

Respondent Hamer acted without a Complaint before him and without personal jurisdiction over the petitioner. By any standard his judicial behavior is far from being acceptable or usual.

COMPELLING PUBLIC INTEREST

This is not a case of one judge going off the tracks. Respondent Hamer was affirmed by respondents Brochin and Edwin Stern. By denying an appeal as a matter of right the seven justices of the New Jersey Supreme Court sanctioned the Courts below. One Federal District Court judge and three Federal appellate judges have sanctioned the acts of the New Jersey judges. By my count fourteen different judges in five different jurisdictions and their ancillary staffs of clerks,professional and para-professionals either don't know or don't care about :

1. The due process clause of the Fourteenth Amendment, and,

2. 42 USC § 1983,and,

3. Pennoyer v. Neff,and,

4. Burnham v. Superior Court of California.

If this Court's rulings are to have meaning they must be enforced irregardless of the presummed standing of the respondents.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph M. Flatley

April 24, 1996

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-5311

JOSEPH M. FLATLEY,
Appellant

v.

CHRISTINE TODD WHITMAN, Governor of the State of New Jersey; MURRY D. BROCHIN; ROBERT E. HAMER; EDWIN H. STERN, Judges of the Superior Court of New Jersey, officially and personally; ROBERT L. CLIFFORD; ALAN B. HANDLER; DANIEL J. O'HERN; STEWART G. POLLOCK; MARIE L. GARIBALDI; GARY S. STEIN; ROBERT N. WILENTZ, Justices of the Supreme Court of New Jersey, officially and personally; STERN & NACKSON, P.C., a New Jersey Professional Corporation; GARY E. STERN; JOSEPH LEWIS NACKSON; JOAN FLATLEY

Appeal from the United States District Court
for the District of New Jersey
(D. C. Civ. No. 94-cv-04914)
District Judge: Honorable Alfred J. Lechner, Jr.

Submitted Under Third Circuit LAR 34.l(a)
October 5, 1995
Before: MANSMANN, ALITO and ROTH, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by the

appellant, it is

ADJUDGED AND ORDERED that the judgment of the district

court be and is hereby affirmed.
Costs taxed against the appellant.

BY THE COURT,

signed: CAROL LOS MANSMANN, U.S.A.J.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOSEPH M. FLATLEY,
Plaintiff,

v.

CHRISTINE TODD WHITMAN,
ET AL ,
Defendants.

CIVIL ACTION NO. 94-4914
ORDER

This matter having come before the court by way of the motion by defendants Governor Christine Todd Whitman, Murry D. Brochin, Robert E Hamer, Edwin H Stern, Robert L. Clifford, Alan B. Handler, Daniel J. O'Hern, Stewart G. Pollock, Marie L. Garibaldi, Gary S. Stein and Robert Wilentz (the "State Defendants") to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure (the 11§Rules") 12(b) (6), and the motion by defendants Stern & Nackson, Gary E. Stern and Joseph Lewis Nackson to dismiss plaintiffs complaint pursuant to Rul 12(b) (6), and the motion by defendant Joan Flatley to dismiss plaintiff's complaint pursuant to Rule 12(b)(6), (all motions collectively referred to as the "Defendants' Motions to Dismiss") and the court having considered the submissions of the parties, and for the reasons set forth in a Letter-Opinion filed on this date, and for good cause shown,

IT IS, on this 22nd day of March, 1995,

ORDERED, that all defendants' Motions to Dismiss be and hereby are granted, and it is further

ORDERED, that this case be and hereby is dismissed.

Signed: Alfred J. Lechner, U.S.D.J.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF 22 March 1995
ALFRED J. LECHNER, JR.
JUDGE

NOT FOR PUBLICATION

LETTER-OPINION

Flatley v. Whitman et al

Civil Action No. 94-4914 (AJL)

This is an action brought by plaintiff Joseph M. Flatley Plaintiff Flatley") against Governor Christine Todd Whitman ("Governor Whitman"), Murry D. Brochin, Robert E. Hamer ("Judge Hamer"), Edwin H. Stern (judges of the Superior Court of New Jersey), Robert L. Clifford, Alan B. Handler, Daniel J. O'Hern, Stewart G. Pollock, Marie L. Garibaldi, Gary S. Stein, and Robert N. Wilentz (Justices of the Supreme Court of New Jersey) collectively the "Judicial Defendants"), Gary E. Stern, Joseph Lewis Nackson, and Stern & Nackson, Esqs. ("Stern & Nackson") and Joan M. Flatley ("Defendant Flatley") (all defendants will also collectively be referred to as the "Defendants"). Plaintiff Flatley alleges the Defendants, individually and in their official capacities, conspired to and violated his constitutional and civil rights in violation of 18 U.S.C. § 241, and 42 U.S.C.§§§ 1983, 1985 and 1986. See Complaint, filed 11 October 1994 the "Complaint"). Jurisdiction is alleged pursuant to 28 U.S.C. 1343. Venue appears proper pursuant to 28 U.S.C. § 1391(b).

Currently before the court are the motions from Governor Whitman and the Judicial Defendants' to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal

Rule of Procedure (the "Rules") 12(b)(6) (the "State DEfendants 'Motion to Dismiss Stern & Nackson's Motion to Dismiss pursuant to Rule 12(b)(6) (the "Stern & Nackson Motion to Dismiss"), and Defendant Flatley's motion to dismiss pursuant to Rule 12(b)(6) (the "Defendant Flatley Motion to Dismiss").[1]

For the reasons set forth below, all motions to dismiss are granted.

Facts

Plaintiff Flatley and Defendant Flatley were married on 9 April 1964 and divorced by a judgment of the New York Supreme Court (the "Divorce Judgment") on 18 June 1982. See opinion of New Jersey Superior Court, Appellate Division (the "Appellate Division"), filed 25 March 1991 (the "First Appellate Division Opinion"), at 2. The Divorce Judgment included provisions requiring Plaintiff Flatley to pay alimony and child support for the couple's four children. Id.

After the divorce, the Flatleys commenced what was to become virtually continuous litigation concerning Plaintiff Flatley's alimony and support obligations. Id. On 18 October 1985, during

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[1]The State Defendants submitted: Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), Letter Brief in Support of Motion to Dismiss; Defendants Stern & Nackson submitted: Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), Letter Brief in Support of Motion to Dismiss, Affidavit of Joseph Lewis Nackson; Defendant Flatley submitted: Affidavit of Joan M. Flatley in support of the motion to dismiss.

Plaintiff Flatley submitted: Letter Brief in Opposition to the State Defendants' Motion to Dismiss, filed 5 January 1995, Letter Brief in Opposition to Defendant Flatley's Affidavit filed 14 February 1995, and Letter Brief in Opposition to Stern & Nackson's Motion to Dismiss, filed 23 February 1995 (these Letter Briefs are referred to collectively as the "OPpposition")

one of the bouts of litigation between the Flatleys, the New York Supreme Court ordered the entry of a judgment (the "New York Judgment") in favor of Defendant Flatley and against Plaintiff Flatley in the amount of $43,167.00 for unpaid alimony and child support, plus costs and interest, from 30 November 1984. Id. The New York Judgment was entered on 30 December 1986. Id. at 3. Plaintiff Flatley appealed the New York Judgment, and on 16 March 1987 it was affirmed. Id.

During the New York litigation of Plaintiff Flatley's alimony and child support Obligations, Plaintiff Flatley's father died. Id Plaintiff Flatley was the executor and sole beneficiary of his father's estate, which included real estate located in North Arlington, New Jersey (the "North Arlington Property"). Id. On 2 January 1990, Defendant Flatley filed a complaint in the New Jersey Superior Court, seeking to obtain a New Jersey judgment which would enable her to collect the unpaid arrearages of alimony and support from Plaintiff Flatley's interest in the North Arlington Property. See Opinion of Appellate Division, Filed 10 December 1991 (the "Second Appellate Division Opinion"), at 2.

On 5 June 1990, the Superior Court of New Jersey Chancery Division, entered judgment in Defendant Flatley's favor in the amount of $92,184.67 (the Chancery Division Judgment"). Id Plaintiff Flatley appealed the Chancery Division Judgment to the Appellate Division, which held that Plaintiff Flatley's arguments "were untenable and that, because he had not acted with the candor he owed to the court, his litigating tactics were reprehensible." Id.

On 17 August 1990, Defendant Flatley obtained a writ of execution (the "Writ of Execution") to satisfy the Chancery Division Judgment. Id. at 2-3. The Sheriff of Bergen County, New Jersey (the "Sheriff"), levied on the North Arlington Property. Id. at 3. Plaintiff Flatley sued the Sheriff in New Jersey Superior Court, Law Division (tthe "Law Division"), seeking to squash the levy." Id. Plaintiff Flatley contended the North Arlington Property

belonged not to him, but to his deceased father's estate. Plaintiff Flatley claimed the Property was therefore immune from execution to satisfy his personal debts. Id He also claimed the levy was invalid because the sheriff failed to attempt to satisfy the Chancery Division Judgment out of personally before levying the North Arlington Property Id

The Law Division rejected both of Plaintiff Flatley's arguments, and dismissed the complaint for failure to state a claim upon which relief could be granted. Id The North Arlington Property was sold to Defendant Flatley on 5 June 1991, pursuant to an execution sale. Id

Plaintiff Flatley appealed the Law Division's dismissal of

his complaint to the Appellate Division.Id The Appellate Division found all of Plaintiff Flatley's appellate arguments to be "clearly without merit." Id. at 7. The court could have disposed of the appeal based solely on the prohibition against allowing executors who are not attorneys to appear pro se. The court, however, chose not to do so "because [their] purpose [was] to put an end to this litigation." Id. at 4. Citing Defendant Flatley's "ten-year pursuit of [Plaintiff Flatley] ever since their divorce to locate and seize assets with which to enforce his support and alimony obligations," Id. at 6, on 10 December 1991 the Appellate Division affirmed the decision of the lower court. Id. at 9.

On 11 October 1994, Plaintiff Flatley filed the instant Complaint in this court. As is often the case with pro se submissions, the Complaint is little more than a rambling, often incoherent, diatribe of Plaintiff Flatley's displeasure at having to pay court-ordered alimony to his ex-wife and support for his four children Under the heading "New Jersey History Of This Action," Plaintiff Flatley alleges "Defendant Flatley sought and obtained by Order to Show Cause and Complaint a full, [sic] faith and credit judgment against Plaintiff Flatley. The entry of the judgment disposed of the Complaint. Complaint at ¶ 13.

Plaintiff Flatley goes on to allege "[i]f there was a question of whether the judgment was satisfied or not; it was definitively answered by Judge Robert E. Follender [not a party to this action] who on July 12, 1991 merged defendant's judgment with the title she acquired at the Sheriff'sSale [sic] on June 5, 1991." Complaint at 5 15.

In Count One, Plaintiff Flatley claims Judge Hamer of the Law Division, by allegedly ordering Plaintiff Flatley to appear in New Jersey, has divested himself of both good faith and judicial immunity. Both are grounded in the principle of regularity. Here the proceeding can never become regular for we have defendant-Flatley whining for discovery after both her complaint and judgment have been satisfied. A regular judicial proceeding consists necessarily of two or more parties, a judge and a controversy. Missing here is a party and a controversy. Complaint at ¶ 21. Plaintiff Flatley concludes Judge Hamer's actions "are in violation of the territorial grant,the United States Constitution, the IVX [sic] Amendment thereto. Pennoyer v. Neff, and International Shoe [sic]," and "42 U.S.C. § 1983; deprivation of immunities." Complaint at ¶¶ 21 to 22.

The Complaint to further attack Judge Hamer's findings, alleges the Appellate Division Judges violated "42 U.S.C. 1985(3); deprivation of equal protection and immunities [sic]," and 18 U.S.C. § 241 (conspiracy). See Complaint at ¶ 36. The Complaint also claims the denial of certification by the Supreme Court of New Jersey exposes all of the New Jersey Supreme Court Justices to liability, both individually and in their official capacities,under 42 U.S.C.§ 1983. Complaint at ¶ 41.

Plaintiff Flatley further alleges Stern & Nackson and Defendant Flatley, during Stern & Nackson's representation of Defendant Flatley, "failed to disclose a material fact to the Hamer court, to wit, that the proceeding had terminated," and "have committed a fraud against [Plaintiff Flatley] and the Hamer court and in violation of 42 U.S.C. [§§] 1983 [and 1985], and of 18 U.S.C. § 241."

Complaint at ¶ 49-62.

Plaintiff Flatley's Complaint does not contain any allegations directed against Governor Whitman or the State of New Jersey. Plaintiff Flatley, however, demands damages from the State of New Jersey "for each and every violation of 42 U.S.C. §§§ [sic] 1983, 1985, 1986." The Complaint seeks damages from the Judicial Defendants, Defendant Flatley and Stern & Nackson, and "[c]onviction and punishment in accordance with 18 U.S.C. § 241 for each defendant for each violation.¶ Complaint at 13-14.

Discussion

A. Standard of Review for Pro Se Submissions

It as recognized that pro se submissions "must be held to 'less stringent standards than formal pleadings drafted by lawyers." Estelle v. Gamble, 429 U.S. 97, 106 (1976), reh'g denied, 429 U.S. 1066 (1977) (quoting Conley v. Gibson 35S U.S. 41, 45-46 (1957)); see also Haines v. Kerner, 404 U.S. 519, 520, reh'g. denied, 405 U.S. 948 (1972); United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992); Lewis v. Attornev Gen. of United States, 878 F.2d 714, 722 (3d Cir. 1989). When reviewing a pro se complaint, a court must construe a plaintiffts factual allegations and his or her claim liberally. Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989); Haines, 404 U.S. at 520; Roman v. Jeffes, 904 F.2d 192, 197 (3d Cir. 1990).

B. Standard For Dismissal Under Rule 12(b)(6)

Because granting a motion under Rule 12(b)(6) can result in a dismissal at an early stage of a plaintiff's case, all of a plaintiff's allegations must be taken as true and all reasonable factual inferences must be drawn in his or her favor. Gomez v. Toledo, 446 U.S. 635, 636 (1980); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255 (3d Cir. 1994); Jordan v. Fox. Rothchild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994); Schrob v. Catterson,

948 F.2d 1402, 1405 (3d Cir. 1991); Unger v. National Residents Matchinq Program, 928 F.2d 1392, 1395 (3d Cir. 1991); Markowitzv. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990i; Melikian v. Corradetti, 791 F.2d 274, 277 (3d Cir. 1986). Nevertheless, legal conclusions made in the guise of factual allegations are given no presumption of truthfulness. See Papasan v. Allain, 478 U.S. 265, 286 (1986); Haase v. Webster, 807 F.2d 208~~~ 215 (D.C.Cir. 1986); Briscoe v. LaHue, 653 F.2d 713, 723 (7th Cir. 1981), af"d, 460 U.S. 325 (1983); Western Mining Council v.Watt, 643 F.2d 618, 626 (9th Cir.), cert. denied, 454 U.S. 1031 (1981); Bermingham v. Sony Corp. of Am., 820 F.Supp. 834, 846 (D.N.J. 1992), aff'd, 37 F.3d 1485 (3d Cir. 1994).

A court may dismiss a complaint for failure to state a claim where it appears beyond doubt that no relief could be granted under any set of facts which could be proved consistent with the allegations. Hartford Fire Ins. Co. v. Merrett Underwriting Agency Management Ltd., _ U.S. , 113 S.Ct. 2891, 2917 (1993); Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Piecknick, 36 F.3d at 1255; ALA. Inc. v. CCAIR. Inc., 29 F.3d 855, 859 (3d Cir. 1994); Jordan, 20 F.3d at 1261; Unger, 928 F.2d at 1395; Markowitz, 906 F.2d at 103; Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988); Anqelastro v. Prudential-Bache Secur.. Inc., 764 F.2d 939, 944 3d Cir. 1985), cert. denied, 474 U.S. 935 (1985).

A Federal court reviewing the suf f iciency of a complaint has a limited role. "The issue is not whether a plaintiff will ultimately-prevail but whether the claimant is entitled to offer evidence to support his [or her] claims. "Scheuer v. Rhodes, 416 U.5. 232, 236 (1974); Estate of Bailey v. County of York, 768 F.2c 503, 506 (3d Cir. 1985); Berminqham, 820 F.Supp. at 846.

Applying these principles to the Complaint, which appears to allege state actors violated Plaintiff Flatley's rights, the inquiry AS whether the Complaint sufficiently alleges a claim pursuant

to 42 U.S.C. § 1983, so as to entitle Plaintiff Flatley to offer evidence in support.[2]

C.42 U.S.C. § 1983

Section 1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

"In order to prevail in a [section] 1983 action, a plaintiff must establish (1) that 'the conduct complained of was committed by a person acting under color of state law' and (2) that the 'conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.'" Shaw v. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990) (quoting

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[2]With regard to Plaintiff Flatley's 42 U.S.C §§ 1985 and 1986 claims, absolutely nothing in the Complaint supports an allegation of conspiracy to violate Plaintiff Flatley of his civil rights, as is required by section 1985; additionally nothing in the Complaint supports an allegation of neglect to prevent the deprivation of Plaintiff Flatley's civil rights, as required by section 1986.

Similarly, Plaintiff Flatley's Complaint does not allege that any defendants conspired against his rights, as required by 18 U.S.C. § 241. Accordingly, Plaintiff Flatley's Complaint, at best alleges a cause of action pursuant to 42 U.S.C. 1983 22 March 1995

Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986).

1. the Judicial Defendants

One of the most well-settled doctrines of American jurisprudence is that judges are absolutely immune from liability for damages for acts taken within their judicial discretion. Briscoe v. LaHue, 460 U.S. 325 (1983); Forester v. White, 484 U.S. 219 (1988); Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1967). Judicial immunity from tort liability is a time-honored precept in American jurisprudence.

[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him [or her], shall be free to act upon his [or her] own convictions, without apprehension of personal consequences to himself [or herself]. Liability to answer to everyone who might feel himself [or herself] aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347 (1872).

Liability under section 1983 is to be assessed against the background of this general principle of tort immunity. Briscoe, 460 U.S. at 334 (1983); Imbler v. Pachtman, 424 U.S. 409, 418 (1976). "[T]he cloak of judicial immunity has been extended even when a judge acts maliciously and corruptly or when his [or her] acts are flawed by grave procedural errors." Stump 435 US at 353-59.

As long as a judge acts within his judicial capacity, he or she is afforded absolute immunity from section 1983 claims for damages. Cleavinger v. Saxner, 474 U.S. 193, 199 (1985) ("This Court has observed: 'Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.'" (quoting Pierson, 386 U.S. at 553-54 (1967))); Dennis v. Sparks,

449 U.S. 24, 27 (1980) (relying on Bradley and Pierson, Court explained rule of absolute immunity for judges from damage actions under section 1983); McArdle v. Tronetti, 961 F.2d 1083, 1084-85 (3rd Cir. 1992) (same).

Two criteria must be met in order for absolute judicial immunity to attach. First, the act being called into question must be a judicial act. Forester v. White, 484 U.S. 219, 227-29 (1988); Stump, 435 U.S. at 360. Second, the court must have subject-matter jurisdiction at the time the judge commits the alleged acts complained of. Id. at 356-57.

In the instant matter, it is beyond dispute that the acts performed by the Judicial Defendants were judicial acts. Judge Hamer's order requiring Plaintiff Flatley to appear in New Jersey was associated with a matter in his court involving the payment of alimony and child support. The judges of the Appellate Division and the justices of the New Jersey Supreme Court simply reviewed the lower courts' decisions in their roles as appellate judges.

Because the Judicial Defendants were acting in their judicial capacities, the only question is whether there was subject-matter jurisdiction at the time. The scope of the Judicial Defendants' jurisdiction in this regard is to be broadly construed. Stump, 435 U.S. at 356. In fact, only when a judge acts "in the clear absence of all jurisdiction" will immunity be denied. Id. at 356-57.

The Superior Court of New Jersey has original jurisdiction throughout the state of New Jersey. N.J. Const., Art. 6, § 3, s 2. The Appellate Division has jurisdiction over appeals from final judgments of the Superior Court trial divisions, including the Chancery Division. N.J. Court Rule 2:2-3(a)(1); see also Johnson v. New Jersev, 869 F.Supp. 289, 294 (D.N.J. 1994). Because the Judicial Desfendants were working on matters before their respective courts, dealing with complaints that were filed in their respective courts, they clearly had jurisdiction over the Flatley matters at the time of the actions currently complained of by Plaintiff Flatley.

The two criteria required for absolute judicial immunity having been met, all of the Judicial Defendants are absolutely from section 1983 liability, and are therefore immune from Plaintiff Flatley's claims for damages. Cleavinger, 474 U.S. at 199; Dennis, 449 U.S. at 27; McArdle, 961 F.2d at 1084.[3] The Judicial Defendants' Motion to Dismiss is, accordingly, granted.

2. Defendants Flatley and Stern & Nackson

With regard to Plaintiff Flatley's allegations against Defendant Flatley (his ex-wife) and Stern & Nackson (his exwife's attorneys), the first requirement for maintaining a section 1983 action has simply not been met. There is simply no allegation of any state action with respect to these defendants.

The Complaint merely states: "Defendants Stern & Nackson, P.C., Gary Stern and Flatley have failed-to disclose a material fact to the Hamer court, to wit, that the proceeding had terminated, have

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[3]Plaintiff Flatley claims that, because the Judicial Defendants are named in the Complaint both in their official capacity and individually, they are exposed to liability. Plaintiff Flatley attempts to support his contention by citing Hafer v. Melo, U.S. , 112 S.Ct. 3S8.

In Hafer, the Court held that a state official sued in her individual capacity is a "person" subject to suit under section 1983 for her actions, even though the actions may have been taken in her official capacity. Hafer, U.S. at _ , 112 S.Ct. at 362. Hafer, however, has nothing to do with a claim of judicial immunity. In fact, the Hafer court noted its extension of absolute immunity to a limited class of individuals, including judges carrying out their judicial functions, whose special functions or constitutional status requires complete protection from suit.Id. at 363-64. Accordingly, Plaintiff Flatley's contention that the Judicial Defendants are exposed to any liability, whether official, personal or otherwise, is without merit.

committed a fraud against plaintiff and the Hamer court ... in violation of 42 U.S.C. § 1983.' Complaint at
10. Plaintiff Flatley also alleges Defendant Flatley and Stern & Nackson's alleged conduct constitutes "a conspiracy in violation of 42 U.S.C. § 1985," id., and that "Defendants Stern & Nackson, P.C., Nackson and Flatley" have failed to disclose to the Hamer court that the proceeding had terminated, "in violation of 42 U.S.C. § 1983." Id. at 11.

Even in light the liberal reading of Plaintiff Flatley's Complaint due to his pro se status, see discussion at A., supra, there is not a fact in the Complaint to support a section 1983 claim against Defendant Flatley or Stern & Nackson. Nowhere is any state action alleged or indicated. Accordingly, Defendant Fla.ley's Motion to Dismiss and the Stern & Nackson Motion to Dismiss are granted.

3. Governor Whitman and the State of New Jersey

Although Plaintiff Flatley does not make any specific allegations against Governor Whitman, she is named in the Complaint. Similarly, although Plaintiff Flatley does not name the State of New Jersey in the Complaint, or make any specific allegations against the State, he does seek damages from the State, including "Exemplar [sic] damages for each violation by each judge in the amount of $1,00Q,000.00 for each and every violation of 42 U.S.C. §§§ [sic] 1983, 1985, 1986." Complaint at 13 [4]

These claims against Governor Whitman and the State of New Jersey are barred by the Eleventh Amendment to the United States Constitution.It is a fundamental principle of constitutional

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[4]Plaintiff Flatley also seeks, as damages against the State of New Jersey, "[v]acateur of the Hamer warrant, orders, etc. and the reversal of the Brochin/Stern affirmance, and, ... [a]ctual damages including attorney's fees, costs and interst [s ic]"

jurisprudence that a state, as a sovereign entity, may not be sued by a private party without the unequivocal consent of the state or an express congressional abrogation of the state's sovereign immunity. Port Auth. Trans-Hudson Corn. v. Feenev, 495 U.S. 299, 304 (1990); Papasan v. Allain, 478 U.S. 265, 276 (1986); Clark v. Barnard, 108 U.S. 436, 447 (1883). The Supreme Court has recognized that "the principle of sovereign immunity is a constitutional limitation on the [F]ederal judicial power established in Art[icle] III. n Pennhurst State Sch. & Hose. v. Halderman, 465 U.S. 89, 98 (1984). The Eleventh Amendment explicitly incorporates the principle of slate sovereign immunity into the Constitution. U.S. Const. A Amend. X.. The Eleventh Amendment has been interpreted expansively to reflect the rule that a state is immune from suit unless at expressly consents to be sued. In Pennhurst, the Supreme Court stated: This Court's decisions ... establish that 'an unconsenting State is immune from suits brought in [F]ederal courts by her own citizens as well as by citizens of another state.'" 465 U.S. at 100 (citation omitted)

Additionally, Congress has not abrogated the immunity of the states from suit under section 1983. Howlett v. Rose, 496 U.S. 356, 383 (1990); Will v. Michiqan Depot of State Police, 491 U.S. 58, 66 (1989) ("Congress, in passing [section] 1983, had no intention to disturb the States' Eleventh Amendment immunity).

Even where "the state itself is not named as a party, the suit may still be barred if the state is the real party in interest." Rehberg v. Glassboro State College, 745 F.Supp. 1113, 114 (E.D.Pa. 1990) (citing Edelman v. Jordan, 415 U.S. 651, 663, reh'g denied, 416 U.S. 1000 (1974)); see Fitchik v. New Jersey Transit Rail Operations. Inc., 873 F.2d 655, 659 n. 2 (3d Cir.), cert. denied, 493 U.S. 850 (1989); accord Bolden v. Southeastern Pa. Transp. Auth., 953 F.2d 807, 816 (3d Cir. 1991), cert. denied, _ U.S. , 112 S.Ct. 2281 (1992). Accordingly, a state agency or official which is the state's "alter ego" is not a person" under section 1983. Bolden, 953 F.2d at 817; see Will, 491 U.S. at 71 (a suit against a state agency "is no different from a suit against the State itself").

In this_matter, although Governor Whitman is named in the Complaint in her official capacity as governor of the state of New Jersey, Plaintiff Flatley seeks, in his Opposition, to amend his Complaint to name Governor Whitman in her individual capacity. Whether Governor Whitman is named in her official or individual capacity, however, is of no consequence. evidenced by the damages section of the Complaint, wherein Plaintiff Flatley seeks damages from the state of New Jersey, but not against Governor Whitman, it is clear that the state is the real party in interest.

Even if Plaintiff Flatley were to amend the Complaint to name Governor Whitman in her individual capacity and to amend the damages section of the Complaint to seek monetary damages from Governor Whitman, individually, it would not remedy this fatal defect. Nowhere in the Complaint or the Opposition does Plaintiff Flatley provide any factual indication that Governor Whitman is anything other than a "nominal defendant", named only because of her title as governor of the state of New Jersey. Accordingly, Plaintiff Flatley's claims against Governor Whitman, and the state of New Jersey, are barred by the Eleventh Amendment to the United States Constitution.

As discussed, Plaintiff Flatley's Complaint completely fails to support a section 1983 claim. Simply stated, Plaintiff Flatley, for some reason, refuses to pay court ordered alimony to his wife, or_child support for his four children; this refusal does not form the basis for a suit against the Defendants. Accordingly, all defendants motions to dismiss pursuant to Rule 12(b)(6) are granted.

For the foregoing reasons, the State Defendants' Motion to Dismiss is granted; Stern & Nackson's Motion to Dismiss is granted; and Defendant Flatley's Motion to Dismiss is granted. Plaintiff Flatley's Complaint is dismissed as to all defendants.

An order accompanies this opinion.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FLATLEY v. WHITMAN ET AL

CIVIL ACTION NO 94-4914
ORDER

This matter is currently before the court by way of the motion (the "Motion")[1] filed 29 March 1995 by Pro se plaintiff Joseph M. Flatley ("Flatley") for reargument on the LetterOpinion and Order, filed 22 March 1995 (the "22 March LetterOpinion") granting the motions to dismiss Flatley's complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure in favor of defendants Governer Christine Todd Whirman, Murry D. Brochin, Robert E.Hamer ("Judge Hamer"), Edwin H. Stern, Robert L. Clifford, Alan B. Handler, Daniel J. O'Hern, Stewart G. Pollock, Marie L. Garibaldi, Gary S. Stein and Robert Wilentz, defendants Stern & Nackson, gary E. Stern and Joseph Lewis Nackson, and defendant Jaon Flatley. It appears Flatley's Motion is brought persuant to Rule 121 of the General Rules Governing the United States District Court for the District of New Jersey (the "Local Rules"). it further appears a motion for reconsideration or to alter or amend a judgment may be made for one of three reasons: "(1) [A]n intervening change in the controlling law has occured, (2) evidence not previously available has become available,

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[1]Flatley submitted: Notice of Motion to Reargue, Letter Brief in Support of motion for reargument with exhibits A through I (the "Moving Brief"); the state defendants submitted: Letter Brief in Edition to Flatley's motion for reargument.

0r (3) it is necessary to correct a clear error of law or prevent manifest injustice, " Database Am., Inc. v. Bellsouth Advertising & Publishing Corp., 825 F. Supp. 1216, 1220 (D.N.J. 1993) (citation omitted); See Berningham v. Sony Corp of Am., 820 F. Supp. 834, 856 (D.N.J. 1993) ; Oritani Sav. & Loan Ass'n v. Fidelity & Deposit, 744 F. Supp. 1311,1314 (D.N.J. 1990). It further appears that in order to prevail on a motion for r4econsideration, the movant must "concisely' set forth matters or controlling decisions which the movant believes the court has overlooked, Local Rule 121, and it is insufficient to present a "a recapitulation of the cases and arguments considered by (the court) before rendering its original decision." Carteret Sav. Bank, F.A. v. Shushan, 721 F. Supp. 705,706 (D.N.J. 1989).

Flatley's first argument in support of the Motion is that Judge Hamer is not absolutely immune for ordering Flatley to comply with a discovery order on 22 November 1991 (the "Hamer Order"), because Judge Hamer did not have jurisdiction when he acted. Moving Brief at l. Flatley contends that there was not a complaint filed before Judge Hamer, and that he therefore lacked the requisite jurisdiction to order Flatley to comply. Id.

The Hamer Order, however, indicates Judge Hamer acted after having read a verified petition, filed by defendant Joan Flatley, Flatley's ex-wife. Id. at Exhibit F. Accordingly, the matter was properly before Judge Hamer at the time he entered the Hamer Order. He is, therefore, absolutely immune from Flatley's claims for the reasons set forth in the 22 March Letter-Opinion.

Flatley also claims that because he is a New York citizen,

> whether or not [Flatley] paid or did not pay child support to another NEW YORK [sic] resident does not constitute a state interest sufficient to warrant intervention by the Superior Court of New Jersey. Invery [sic] short words, it is none of their business and any intervention is regarded by [Flatley] as invasion [sic] of [his] right to privacy of Griswoldian [sic] proportions. Moving Brief at 2. Flatley cites no authority, however, for his contention

that his state of residence should be the basis for holding a Judge liable under 42 U.S C. § 1983 for the entry of an order compelling discovery. Accordingly, the argument is without merit.

Flatley contends that the other judicial defendants should be compelled to answer his complaint because "the judges unanimously affirmed [Judge] Hamer." Moving Brief at 3 According to Flatley, "[s]uch unanimity satisfies the customary definition of a conspiracy ... two or more persons acting in concert to achieve an illegal end." Id. Because the judicial defendants are absolutely immune for their judicial actions, this argument is also without merit.

As to defendants Joan Flatley and Stern & Nackson (Joan Flatley's attorneys), Flatley contends that their allegedly false statements before Judge Hamer expose them to liability under 42 U.S.C. § 1983. As discussed in the 22 March Letter-Opinion, Flatley has failed to allege state action with regard to defendants Joan Flatley and Stern & Nackson. The dismissal of Flatley's complaint as to these defendants was appropriate

Flatley also argues that the dismissal of his complaint against Governor Whitman and the state of New Jersey, see 22 March LetterOpinion at 16-19, was erroneous .

[Flatley] submits that the question of whether a state can be sued for monetary damages is open. There is a theory that Congess [sic] and the States, when they passed and ratified, respectively the Fourteenth Amendment waived their Eleventh Amendment imunity [sic] by the act of ratification for purposes of this amendment. After diligent review I have not found the theory either advanced or rejected in any Court Moving Brief at 4. Flatley cites no authority for this "theory." Moreover, he acknowledges that the theory upon which Governor Whitman and the state of New Jersey should remain in the case has been "[n]either advanced [n]or rejected in any [c]ourt." Id. There is no merit to Flatley's argument. Flatley's request for reargument as to defendants Governor Whitman and the state of New Jersey is denied.

Finally, Flatley contends that the papers submitted in opposition to the defendants' motions to dismiss must be considered by the court. All of the submissions in this action have been considered, however. See 22 March LetterOpinion at 3, n.l; see also Order, filed 22 March 1995 ("... the court having considered the submissions of the parties ...").

Flatley has stated no basis, under either Local Rule 12I or Fed.R.Civ.P. 59(e), for reconsideration or reargument of the 22 March Letter-Opinion and Order. He has cited no controlling authority or dispositive fact which was not thoroughly considered in the 22 March Letter-Opinion and Order. He has not brought forth evidence that was not available to him prior to the filing of the 22 March Letter-Opinion and Order. Moreover, none of Flatley's arguments carry enough weight to alter the decision of the 22 March Letter-Opinion and Order. Because Flatley's Moving Brief does not present any evidence to the court not already considered at the time of the 22 March LetterOpinion, there is no need for the court to review any further submissions from the parties prior to the entry of this Order. For the reasons stated,

IT IS, on this ,12TH day of April, 1995

ORDERED, that Flatley's motion for reargument on the 22 March LetterOpinion and Order is denied.

Signed :Alfred J. Lechner U.S.D.J.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FLATLEY v. WHITMAN ET AL

CIVIL ACTION NO 94-4914
ORDER

This matter is currently before the court by way of the motion (the "Motion")[1] filed 21 April 1995 by pro se plaintiff Joseph M. Flatley ("Flatley") for reargument on the Order, filed 12 April 1995 (the "12 April Order), denying Flatley's motion for reargument on the Letter-Opinion and Order, filed 22 March 1995 (the "22 March Letter-Opinion") granting the motions to dismiss Flatley's complaint for failure to state a claim upon which relief can be granted pursuent to Rule 12(b)(6) of the Federal Rules of Civil Procedure in favor of defendants Governor Christine Todd Whitman, Murry D. Brochin, Robert E. Hamer ("Judge Hamer"), Edwin H. Stern, Robert L. Clifford, Alan B. Handler, Daniel J. O'Hern, Stewart G. Pollock, Marie L. Garibaldi, Gary S. Stein and Robert Wilentz, defendants Stern & Nackson, Gary E. Stern and Joseph Lewis Nackson, and defendant Joan Flatley. It appears Flatley's Motion is brought pursuant to Rule 12I of the General Rules Governing the United States District Court for the District of New Jersey (the "Local Rules").

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[1]Flatley submitted: Notice of Motion to Reargue, Affidavit in Support of Motion (the "Flatley Affidavit"), Letter Brief in Support of motion for reargument with exhibits A through I (the "Moving Brief").

A motion for reconsideration or to alter or amend a judgment may be made for one of three reasons: "'(1) [A]n intervening change in the controlling law has occurred, (2) evidence not previously available has become available, or (3) it is necessary to correct a clear error of law or prevent manifest injustice,'~~B Database Am., Inc. v. Bellsouth Advertisinq & Publishinq Corp., 825 F.Supp. 1216, 1220 (D.N.J. 1993) (citation omitted); see Berminqham v. Sony CorD of Am., 820 F.Supp. 834, 856 (D.N.J. 1993); Oritani Sav. & Loan Ass'n v. Fidelity & Deposit, 744 F.Supp. 1311, 1314 (D.N.J. 1990). In order to prevail on a motion for reconsideration, the movant must "concisely" set forth matters or controlling decisions which the movant believes the court has overlooked. Local Rule 12I. It is insufficient to present a "recapitulation of the cases and arguments considered by [the court] before rendering its original decision." Carteret Sav. Bank, F.A. v. Shushan, 721 F.Supp. 705, 706 (D.N.J. 1989).

Flatley raises no new arguments in support of the Motion.

He merely states "[h]e did not receive any notice of a proceeding held before Judge Robert E. Hamer on November 14, 1991," and "had no knowledge then and has no knowledge now of a Complaint or Petotion [sic] filed against him in the State of New Jersey or anywhere, that would have allowed Judge Hamer to exercise any jurisdiction on or over [Flatley]." Flatley Affidavit at 115 1 and 3. Flatley also states that the deputy clerk of the Superior Court of New Jersey, Bergen County, "conducted a search of the records in the custody and control of the Bergen County Clerk" and was unable to find a verified petition. Id. at 11 4.

As noted in the 12 April Order, however, Judge Hamer's 22 November 1991 Order (the "Hamer Order") compelling Flatley to comply with a discovery order indicates Judge Hamer reviewed a verified petition. 12 April Order at 3. Accordingly, the matter was properly before Judge Hamer at the time he entered the Hamer Order. He is, therefore, absolutely immune from Flatley's claims for the reasons set forth in the 22 March LetterOpinion.

Flatley also argues that the 12 April Order was "premature." Moving Brief at 2. Flatley argues: "Your sua sponte decision to accelerate the motion which was not emergent has violated the due process rights of all parties and is prejudicial to the Plaintiff...." Id. Flatley contends he was not given an adequate opportunity to reply to various defendants' submissions in opposition to his original motion to reargue. Moving Brief at 2-3. The 12 April Order clearly states, however, that "[b]ecause Flatley's Moving Brief does not present any evidence to the court not already considered at the time of the 22 March LetterOpinion, there is no need for the court to review any further submissions from thge parties prior to the entry of this Order." 12 April Order at 5. Flatley cites no authority for the argument that the vourt's allegedly "premature" entry of the 12 April Order "violates the plaintiff's right to due process." Moving Brief at 4.

There is no merit to any of Flatley's arguments. He has stated no bnasis, under either Local Rule 121 or Fed.R.Civ.P. 59 (e), for reconsideration or reargument of the April 12 Order. He has cited no controlling authority or dispositive fact which was not thoroughly considered in the March 22 Letter-Opinion and Order or the 12 April Order. He has not presented evidence that was not available to him prior to the filing of the 22 March Leter-Opinion and Order or the 12 April Order. None of Flatley's arguments carry enough weight to alter either the decision of the 22 March Letter-Opinion and Order or the 12 April order. Because Flately's Moving brief does not present any evidence to the court not already considered, there is again no need for the court to review any further submissions from the parties prior to the entry of the Order. For the reasons stated,

IT IS, on this 27th day of April, 1995
ORDERED, that Flatley's motion for reargument on the 12 April Order is denied.

SIGNED

Alfred J. Lechner, Jr., U.S.D.J.

APPENDIX F
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-5311

JOSEPH M. FLATLEY,
Appellant

v.

CHRISTINE TODD WHITMAN, Governor of the State of New Jersey; MURRY D. BROCHIN; ROBERT E. HAMER; EDWIN H. STERN, Judges of the Superior Court of New Jersey, officially and personally; ROBERT L. CLIFFORD; ALAN B. HANDLER; DANIEL J. O'HERN; STEWART G. POLLOCK; MARIE L. GARIBALDI; GARY S. STEIN; ROBERT N. WILENTZ, Justices of the Supreme Court of New Jersey, officially and personally; STERN & NACKSON, P.C., a New Jersey Professional Corporation; GARY E. STERN; JOSEPH LEWIS NACKSON; JOAN FLATLEY

SUR PETITION FOR REHEARING

Present: MANSMANN, ALITO and ROTH, Circuit Judges.

The petition for panel rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for panel rehearing is denied.

BY THE COURT,

SIGNED:

Carol Los Mansmann
November 28, 1995

APPENDIX G

Plaintiff

JOAN FLATLEY,
Plaintiff

v.

JOSEPH M. FLATLEY,
Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
FAMILY PART
DOCKET NO. M-13805-90

Civil Action

ORDER FOR DISCOVERY

Upon reading the annexed Verified Petition,

IT IS on this l4th day of November, 1991,

ORDERED, that the Defendant, JOSEPH M. FLATLEY appear and make discovery on oath, concerning the property and things in action of the Defendant, at the offices of Stern & Nackson 39 Hudson Street, Hackensack, New Jersey, on the 22nd of November, 1991, at 10:00 A.M., and it is further

ORDERED, that the Defendant, JOSEPH M. FLATLEY, appear and make discovery on oath concerning the property and things in action of the Defendant, JOSEPH M. FLATLEY, at the offices of Stern & Nackson, Esqs., Attorneys for Plaintiff, 39 Hudson Street, Hackensack, New Jersey, on November 22, at-10:00 A.M., and further requiring said Defendant to bring personal tax records for to the last five (5) years; any and all financial statements prepared

on his behalf or given by him to third parties, any and all bank records, including butnot limited to bank statements and cancelled checks for the last three (3) years over which the said JOSEPH M. FLATLEY holds jointly with Karen S. Tardy, or any account(s) in the name of Karen S. Tardy in which he has a beneficial interest; copies of all deeds of all real property owned by said Defendant, or in which he had a beneficial interest for the last five (5) years; copies of all leases in which he is the lessor or lessee; copies of all mortgages in which he is the mortgagee; copies of any and all documents evidencing debts or obligations owing to him; and further to bring, with respect to his Executorship of the Estate of Michael J. Flatley, Deceased, copies of any and all insurance policies on the life of Michael J. Flatley, copies of any and all brokerage accounts and statements for the last three (3) years; copies of all bank statements and cancelled checks of all accounts of the Estate of Michael J. Flatley, copies of any and all estate accountings, both formal and informal; copies of all invoices, correspondence or other documents evidencing debts of the Estate; copies of any and all estate tax returns; and copies of any and all correspondence relating to the Estate of Michael J. Flatley, including but not limited to requests for release of Transfer Inheritance Tax liens, including but not limited to all documents evidencing the policies and proceeds of monies formerly held by Metropolitan Life Insurance Total Control Account No. 011000028:0093 0700281964 040; and it is further

ORDERED, that a copy of this Order, which may be certified as a true copy by the Attorneys for the Petitioner, be served upon said Defendant, JOSEPH M. FLATLEY, personally or by registered or certified mail, return receipt requested, at least

ten (10) days before the date for appearance fixed herein.

SIGNED:

ROBERT E. HAMER
STAMPED: EX–PARTE

APPENDIX H

JOAN FIATLEY,
Plaintiff

v.

JOSEPH M. FIATLEY,
Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
FAMILY PART
DOCKET NO. M—13805— 90

Civil Action

WARRANT OF COMMITMENT

STATE OF NEW JERSEY

COUNTY OF BERGEN

WHEREAS, by a certain Order made in our Superior Court, Bergen County Chancery Division, Family Part, bearing the date of November 14,1991 in a certain action therein pending between Joan Flatley, plaintiff and Joseph Flately, defendant, it was Ordered that defendant, Joseph M. Flatley, be incarcerated in the Bergen County Jail there to remain, charged with violation of litigant's rights until such time as he shall have obeyed this Court's Order of November 14, 1991, and that a warrant for defendant's arrest issue for that purpose.

Therefore, we command you that you apprehend the defendant, Joseph M. Flatley, and safely and closely keep him in your custody in the Bergen County Jail until he shall have obeyed this

Court's Order or until our said Court shall make an Order to the contrary. And you are to make return to our said Superior Court, Chancery Division, at the Bergen County Court House, Hackensack, New Jersey on the day of, 1992, under your hand, of your doings in the premises together with this writ.

SIGNED:

ROBERT E. HAMER
MAY 13, 1992

APPENDIX I

JOAN FLATLEY,
Plaintiff :

v.

JOSEPH FLATLEY,
Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY

FAMILY PART
DOCKET NO. M-13805-90

Civil Action

FINAL JUDGMENT

the above matter coming on for plenary hearing before the

Honorable Birger M. Sween, on the date fixed for trial of the issue Of the Plaintiff's right to a New Jersey Judgment for support, arrearages and for the enforcement of a New York Judgment entered , in favor of the Plaintiff and against defendant in the Supreme if Court of New York, Nassau County, on December 30, 1986, in the presence of Bloom & Stern, Esqs., (GarY E. stern, Esq., appearing) on behalf of Plaintiff, and in the presence of Joseph F. McCarthy, Esq. (Michael R. Pichowiczt Esq. appearing) on behalf of Defendant, I Joseph Flatley: and the court having rendered a written opinion on May 23, 1990,

IT IS, on this 5th day of June 1990

ORDERED, that Judgment be entered as follows:

1. It is hereby adjudged that the New York Judgment entered in the Supreme Court of New York, Nassau County, Index No. 13118-1980, on December 30, 1986, is declared to be a Final Judgment, subject to full faith and credit in this State, in favor of the Plaintiff And against the Defendant in the sum of $43,167.00, no part of which has heretofore been paid; that Plaintiff is entitled to interest on said Judgment at the New York statutory rate of nine (9%) per cent from November 30, 1984. There is found to be due as of January 30, 1990, on account of said Judgment and accrued interest, the amount of $63,541.67.

2. Pursuant to the Judgment of Divorce between the parries rendered on June 18, 1982, there has accrued additional arrearages of support beyond the sums referred to in paragraph above in the amount of $28,643.00 ~ representing arrearages due through March 31, 1990.

SIGNED:
BIRGER M. SWEEN, J.S.C.

EXHIBIT J

SUPERIOR COURT OF BERGEN COUNTY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-5620-91
APPELATE NO. A-

JOSEPH M. FLATLEY, Executor of the Estate of Michael J. Flatley,
Plaintiff,

vs.

JACK TERHUNE, Sheriff of Bergen County,
Defendant.

TRANSCRIPT OF MOTION

PLACE: Bergen County Courthouse
Hackensack, New Jersey
DATE: July 12, 1991

B E F O R E: HONORABLE DAVID B. FOLLENDER, J.S.C.

TRANSCRIPT ORDERED BY: JOSEPH M. FLATLEY

A P P E A R A N C E S :

JOSEPH M. FLATLEY, PRO SE PLAINTIFF

BERGEN COUNTY COUNSEL
BY; MARIA LA FIANDRA, ESQ.,
Attorney for the Defendant

STERN & NACKSON
BY: GARY E. STERN, ESQ.,
Attorney for Intervenor Joan Flatley

Thomas F. Botuillier, C.S.R.
Official Court Reporter
Bergen County Courthouse

MR. FLATLEY: That's absolutely true, your Honor.
THE COURT: Mr. Flatley, I did not interrupt you– –
MR. FLATLEY: I'm sorry.
THE COURT: – – and I would expect the same courtesy from you.

Now, although that doesn't fully and completely fall presently on this motion, yet it is clear to me that the Appellate Division did by, obviously, by interference consider the status of the property. The Appellate Division clearly held this property was subject to the debts of Mr. Flatley under the law of this State.

Mr. Flatley's debt in this case was a judgment duly obtained by Court– – duly obtained from a Superior Court of New Jersey on a New York Judgment under the Full Faith and Credit Clause of the United States Constitution. And as a result of the obtaining of that Judgment the property in question was exposed to sale, and the officer duly appointed by law to conduct that sale was the Sheriff of Bergen County.

A writ of execution was issued, there was a levy made. The writ was – – that was issued, or the execution that was made, was upon the property of Mr. Flatley, the house in question.

Pursuant to that writ the Sheriff is required, he's mandated to follow the law and expose the property for sale. The Sheriff did that. He conformed in all respects with the commands of the law and, consequently, the property in question was sold at a public auction to a bidder, who happened to be Mrs. Flatley, and she bought the [roperty for $100.

Now, any person would have examined the record, and you might think well, $100 for a valuable piece of property, how could it

possibly go for such a small sum. Well, the answer to taht is also quite obvious. Any person who is bidding at the sale would either know or be chargeable with knowledge of the record, and the record in this case demonstrated that there was a substantial judgment against Mr. Flatley, the owner of the property, which had to be satisfied by any bidder before that bidder would be able to take over the property.

So, there's a very valid explanation for why Mrs. Flatley was able to pick up the property in question for the small sum of $100, since there was an estimated value of this property of, my recollection is, $130.000.

in sum, there is absolutely no basis for a calim being made against the Sheriff in this case, who's the only party to this action, who followed his duties as set forth by law to the letter, and the only possible question that has been raised here is with regard to the Statute that requires theSheriff to search as to whether or not the debtor owns personalty.

Well, obviously in this case such a search would be futile,the debtor here is a nonresident, and the only property that the nonresident had in this County was the real property in question, there was no personalty, and the Sheriff isn't required to go on.

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW' JERSEY

Joseph M. Flatley
328 Hempstead Avenue
Rockville Centre ,N.Y. 11570
516-536-631 4 (Phone)
516-766-7733(Fax)
Plaintiff Pro Se

JOSEPH M. FLATLEY,
Plaintiff

v.

CHRISTINE TODD WHITMAN,Governor of the state of New Jersey, and, MURRY D. BROCHIN, ROBERT E. HAMER and EDWIN H. STERN Judges of the Superior Court of New Jersey, officially and personally, and, ROBERT L. CLIFFORD, ALAN B. HANDLER, DANIEL J. O'HERN,STEWART G. POLLOCK, MARIE L. GARIBALDI ,GARY S.STEIN, and ROBERT N. WILLENTZ, Justices of the Supreme Couert of New Jersey, officially and personally, and STERN & NACKSON, P.C. , a New Jersey Professional Corporation, GARY E.STERN and JOSEPH LEWIS NACKSON, and, JOAN FLATLEY,

De f endaNTS .

COMPLAINT FOR DAMAGES AND ANCILLARY RELIEF

Plaintiff , being duly sworn, for his Complaint herein alleges:

NATURE OF THE ACTION

1 . Plaintiff brings this action under 42USC §§§ 1983 , 1985 ,1986 and 18 USC § 214 to redress injuries sustained by the plaintiff as a result of the defendants' wrongful , unlawfuland continuing abuse and violation of the United states Constitution. Plaintiff at all times has been a resident of the state of New York ,yet is wrongfully and unlawfully encumbered in New Jersey by an arrest warrant and related orders.

THE PART I E S

2. Plaintiff at all times has been a resident of the state of New York.

3. Defendant Whitman is the Governor of the state of New Jersey and is the nomoinal defendant who represents the People of the state of New Jersey.

4. Defendants Brochin and Edwin stern are Judges of the SuperiorCourt of New Jersey assigned to the Appellate Division.

5. Defendant Hamer is a Judge of the Superior Court of New Jersey assigned to Bergen County: Chancery : Family.

6. Defendants Clifford, handler, O'Hern,Pollackf Garibaldi , Stein and Wilentz are Justices of the Supreme Court of New Jersey.

7. Defendant Stern & Nackson, P.C. is a New Jersey Professional Corporation organized to practice law in the state of New Jersey . Its principal place of business is located at 39 Hudson street , Hackensack , Bergen County , New Jersey.

8.Defendants Gary stern and Nackson are the stakeholders in Stern Nackson, P.C., are attorneys admitted to the practice of law in New Jersey and have represented defendant Flatley until April, 1994.

9. Defendant Flatley is a New York citizen who resides in Nassau County, New York.

JURISDICTION AND VENUE

10. This action arise under 42 USC §§§ 1983, 1985, 1986 and 18 USC § 2 4 1 .

11. The jurisdiction of this court is invoked pursuant to 28 USC § 1 343.

12. Venue is proper in this Court pursuant to 28 Age USC § 1391 (b) because the cause of action arose in this District.

NEW JERSEY HISTORY OF THIS ACTION

13. Defendant Flatley sought and obtained by Order to Show Cause and Complaint a full , faith and credit judgment against Plaintiff Flatley. The entry of the judgment disposed of the Complaint.

14. Defendant Flatley obtained satisfaction of her full, faith and credit judgment by the sale of plaintiff's interest in New Jersey real estate on JUne 5,1991.

15. If there was a question of whether the judgment was satisfied or not ; it was definitively answered by Judge Robert E. Follender who on July 12 ,1991 merged defendant' s judgment with the title she. acquired at the Sheriff ' sSale on June 5 ,1991 .

16. AS A MATTER OF FACT AND AS A MATTER OF LAW, FLATLEY V. FLATLEY TERMINATED NO LATER THAN JULY 12, 1991.

COUNT I

17. Plaintiff repeats and realleges the allegations of Paragraphs 1

through 16 above as if fully set forth herein.

18. Without notice to, and absent the physical presence of the plaintiff before him, absent a complaint and in the face of a fully satisfied judgment, Defendant Hamer on November 14, 1991 ordered the plaintiff to appear in the New Jersey offices of Defendant Stern & Nackson, P.C.

19. Defendant Hamer knew or had access to information that would have indicated that Flatley v. Flatley was a terminated , disposed of case. The complaint was disposed of by the judgment. The judgment was satisfied by the Sheriff's Sale.

20. Defendant Hamer is chargeable With the knowledge that his actions are in violation of the territorial grant , the United states Constitution, the IVX Amendment thereto. Pennoyer v. Neff,and International Shoe,

21.By ordering the plaintiff who is a citizen of the state of New York to appear in New Jersey , Defendant Hamer has divested himself of both good faith and judicial immunity. Both are grounded in the principle of regularity. Here the proceeding can never become regular for we have defendant Flatley whining for discovery after both her complaint and judgment have been satisfied. A regular judicial proceeding consists necessarily of two or more parties , a judge and a controversy. Missing here is a party and a controversy.

22. The actions of defendant Hamer are in violation of 42 USC § 1983 ; deprivation of immunities.

COUNT II

23. Plaintiff repets and realleges the allegations of of Paragraphs 1 through 22 above as if fully set forth herein.

24. On April 27 ,1992 at a hearing on an Order to Show cause

which the plaintiff did not attend but appeared by Certification stating that he was a New York resident, that there was no longer a controversy and citing Pennoyer and Intrnational Shoe ; Defendant Hamer issued a bench warrant after stating from the bench that he was signing the wrong order.

25. Defendant Hamer was informed of the facts of the case, chose to ignore them and continued to operate without both judicial and good faith immunity and in continuing violation of 42 USC § 1983; deprivation of plaintiff's immunity

COUNT I I I

26. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25 above as if fully set forth herein.

27. On May 13, 1992 , defendant Hamer at the request of defendants Stern & Nackson ,P.C. and Gary E. Stern in chambers and exparte ordered the arrest of plaintiff. Any such arrest would constitute unlawful confinement and would be abusive of the police powers of the state of New Jersey.

28. Since ther was no underlying justifiable controversy, the complaint and judgment having been previously satisfied, the acts of defendant Hamer are devoid of both judicial and good faith immunity and are in violation of 4LUSC § 1983 ; deprivation of rights and liberty,

COUNT I V

29. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 28 as if fully set forth herein.

30. ON April 5, 1993 , defendants Brochin and Edwin Stern affirmed under Docket No. A-5424-91T5, the acta of defendant Hamer citing personal jurisdiction obtained in the earlier, terminated case.

31. Plaintiff does not deny that personal jurisdiction was obtained in the earlier case based on plaintiff's ownership interest in New Jersey real property.

32. However , once the complaint has been disposed of, and the judgment satisfied; all jurisdiction ceased.

33. Finding otherwise is contrary to common sense , the territorial grant, the United States Constitution, the IVX Amendment thereto, Pennoyer and International Shoe.

34. Defendants Brochin and Edwin stern have Divested themselves by the act of affirmance of both judicial and good faith immunity and have violated 4N USC § 1983; deprivation of rights, privileges and immunities.

COUNT V

35. Both defendants Brochin and Edwin Stern are attorneys and Appellate Court Judges. As such they are chargeable with actual knowledge of the law. To conclude given the facts and record of this case that defendant Flatley had a right of discovery AFTER THE TERMINATION of the cause of action and AFTER THE SATISFACTION of the judgment is beyond credulity.

36. Given their positions and the record in this case it can only be concluded that defendants Brochin and Edwin stern conspired in violation of 42 USC § 1985 (3); deprivation of equal protection and immunities.

COUNT V I

37. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 36 above as if fully set forth herein.

38. Given their positions and the record in this case, it can only be concluded that defendants Brochin and Edwin Stern have con

spired in violation of 18 USC § 241; conspiracy to injure, oppress threaten or intimidate.

COUNT V I I

39. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 38 above as if fully set forth herein.

40. On October 15, 1993, defendants Clifford ,Handler, O'Hern, Pollack, Garibaldi, Stein and Wilentz declined to review as a matter of right or as a petition for certification the plaintiff's appeal for relief from the acta of the courts below under Docket No. 36,839.

41. Since Meeker v. Meeker, provides an exception to the Rules of the Court for hearing jurisdictional matters as a matter of right , defendants Clifford, Handler ,O'Hern,PollockGaribaldi, stein and Wilentz by refusing to even hear the appeal have forefeited any claim to judicial or good faith immunity and have violated 42 USC § 1983; deprivation oaf rights, privileges and immunities.

COUNT VI I I

42. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 41 above as if fully set forth herein.

43. Defendants Clifford, Handler, O'Hern, Pollock, Garibaldi, Stein and Wilentz are attorneys and Supreme Court Justices. As such they are Chargeable with actual knowledge of the law . To indirectly affirm the acts of defendants Hamer , Brochin and Edwin stern is beyond credulity given the facts and record in this case.

44. Given their positions, it can only be concluded that defendants Clifford, Handler, O'Hern, Pollock, Garibaldi, stein and Wilentz conspired in violation of 42 USC § 1985 (3) ; deprivation of

rights, privileges and immunities.

COUNT I X

45. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 44 above as if fully set forth herein.

46. Since the Court was unanimous in its position not to review and given their positions , it can only be concluded that defendants Clifford, Handler ,O'Hern, Pollock, Garibaldi, stein and Wilentz have individually neglected to prevent a conspiracy in violation of 42 USC §1986.

COUNT X

47. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 46 above as if fully Set forth herein.

48. Given their positions and the record in this case, it can only be concluded that defendants Clifford, Handler, O'Hern, Garibaldi, Pollock, stein and Wilentz have conspired in violation of 18 USC § 241.

COUNT X I

49. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 48 above as if fully set forth herein.

50. Defendants Stern & Nackson, P.C. and Gary Stern represented defendant Flatley in obtaining the Hamer orders enumerated above at Counts I,II, and III.

51. Defendants Stern & Nackson, P.C. ,Gary stern and Flatley have failed to disclose a material fact to the Hamer court , to wit, that the proceeding had terminated , have committed a fraud against plaintiff and the Hamer court and in violation of 42 USC § 1983.

COUNT X I I

52. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 51 above as if fully set forth herein.

53. Defendants Stern & Nackson, P.C., Gary Stern and Flatley constitute a conspiracy in violation of 42 USC 1985.

COUNT XI I I

54. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 53 above as if fully set forth herein.

55. Defendants Stern & Nackson, P.C., Gary Stern and Flatley have conspired in violation of 18 USC § 241.

COUNT IVX

56. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 55 as if fully set forth herein.

57. Defendants Stern & Nackson, P.C. and Nackson represented defendant Flatley in defending the Hamer orders before the Appellate Division and the New Jersey Supreme Court.

58. Defendants Stern & Nackson,P.C., Nackson and Flatley have failed to disclose a material fact,to wit, that the proceeding had terminated , to both the Appellate Division and the Supreme Court , committing frauds on both the plaintiff and the courts and in violation of 42 USC § 1983.

COUNT XV

59. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 58 above as if fully set forth herein.

60. Defendants Stern & Nackson ,P.C., Nackson and Flatley con

stitute a conspiracy in violation of 42 USC § 1985.

COUNT XVI

61. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 60 above as if fully set forth herein.

62. Defendants stern & Nackson,P.C., Nackson and Flatley have conspired in violation of 18 USC § 241.

COUNT XVII

63. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 62 above as if fully set forth herein.

64. All of the defendants enumerated above have committed illegal, wrongful and willful acts which have caused severe emotional distress to the plaintiff. As a result of the acts of the defendants which amount to medieval banishment from the stae of New Jersey, plaintiff has not been sble to appear as a witness in matters concerning his father's estate, has not been able to visit his father's grave and has required and received both psychological and medical services for the severe emotional distress caused by the defendants.

65. As a further direct and proximate result of the defendants' wrongful, willful and unlawful acts, Plaintiff's reputation and good will have been damaged , he is wrongfully reported as a criminal,and his right to enjoy the companionship by association with his substantial family in New Jersey has been abrogated .

WHEREFORE, Plaintiff demands judgment against the defendants as f ol lows:

A. AGAINST THE STATE OF NEW JERSEY

i. Vacateur of the Hamer warrant, orders , etc and the reversal of

the Brochin/Stern affirmance,and, ii. Actual damages including attorney's fees, costs and interst, and, iii. Exemplar damages for each violation by each judge in the amount of $ 1, 000 , 000.00 for each and every violation of 42 USA §§§ 1 983, 1985, 1986.

B. AGAINST THE JUDICIAL DEFENDANTS

i. Actual damages including attorney's fees, costs and interest and

ii. Exemplary damages for each violation by each judge in the amount of $ 1, 000 , 000. 00 for each and every violation of 42 USC §§§ 1983, 1985, 1986, and,
iii. Conviction and punishment in accordance with 18 USC § 241 for each judge for each violation.

C. AGAINST DEFENDANTS STERN & NACKSON,P.C. , GARY STERN, NACKSON AND FLATLEY

i. Actual damages including attorney's fees ,costs and interest,and

ii.Exemplary damages for each violation by each defendant in amount of $ 1, 000 , 000.000 for each and every violation of 42 USC §§ 1983 ,1985,and,

iii. Conviction and punishment in accordance with 18 USC § 241 for each defendant for each violation.

JOSEPH M. FLATLEY
October 7, 1994